

STATE OF SOUTH DAKOTA

)

IN CIRCUIT COURT

COUNTY OF DOUGLAS

:§

FIRST JUDICIAL CIRCUIT

FIRST DAKOTA NATIONAL BANK,

21CIV19-000004

Plaintiff,

v.

ROBERT L. BLOM and BECKY J. BLOM,

Defendants.

**COMPLAINT FOR FORECLOSURE
OF PERFECTED SECURITY INTERESTS,
DECLARATORY JUDGMENT AND FOR
AN EMERGENCY RECEIVERSHIP**

First Dakota National Bank ("First Dakota") for its causes of action against Defendants Robert L. Blom and Becky J. Blom, (the "Bloms"), states and alleges as follows:

GENERAL ALLEGATIONS

1. First Dakota is a national bank and "regulated lender" under the laws of the State of South Dakota and the United States of America, with its principal place of business located in Yankton, Yankton County, South Dakota.

2. The Bloms, husband and wife, at all times material were and remain residents of Corsica, Douglas County South Dakota and customers of First Dakota's Corsica, South Dakota branch.

3. The Bloms have multiple loans with First Dakota secured by real estate and personal property. Attached hereto as Exhibits 1-4 are the outstanding notes that remain unpaid by the Bloms.

4. Attached hereto as Exhibit 5 is the mortgage securing those notes and representing First Dakota's perfected first lien position in the real estate owned by the Bloms in Douglas County.

5. Also attached hereto as Exhibit 6 is a copy of the agricultural security agreement that also secure the notes.

6. Attached hereto as Exhibit 7 is a true and correct copy of a print out showing the many interested third parties who claim to co-own or share ownership with the Defendants.

7. First Dakota remains the first lien holder pursuant to its properly filed UCC1/EFS in all personal property assets of the Bloms (save certain items of purchase money equipment collateral and some caretaker filings on behalf of third parties who co-own cattle being fed on site), including but not limited to livestock, farm products, equipment, vehicles, inventory, and accounts receivable, as well as all products and proceeds of the same.

8. On or about January 17, 2019, Bloms had written checks for cattle the bank could not cover, overdrawing their account in excess of \$1,000,000 and creating a default situation on their loans.

9. On or about February 5, 2019, Robert Blom was involved in a serious motor vehicle accident with another party, resulting in his arrest.

10. Upon information and belief and based on a probable cause affidavit, a true and correct copy of which is attached hereto as Exhibit 8, this was not an ordinary accident but was an attempt at self harm and harm to others.

11. Prior to the collision, Robert Blom was the main source for bank information regarding cattle ownership and care. His incapacity and bounced checks are an incurable default and/or constitutes grounds for the bank to deem itself insecure.

12. Neither Rebecca Blom nor any other borrower has the capacity to care for or account for said cattle.

COUNT ONE
FORECLOSURE OF PERSONAL PROPERTY LIENS
(AS TO ALL DEFENDANTS)

13. First Dakota re-alleges the allegations contained in paragraphs 1 through 12 above to the same effect as though fully set out herein.

14. The Bloms' defaults under these loan agreements include but are not limited to their overdrawn account, incapacity, being deemed insecure and inability of Defendants to care for livestock (cattle) in their care, custody and control and pledged to First Dakota.

15. As of February 7, 2019, the total principal amount owed on the Blom notes was \$6,748,600.92. According to the terms of the notes, additional interest accrues on the balance of the notes at a per diem of \$792.75 per day.

16. In addition, attorneys' fees, sales tax thereon, and costs, disbursements, and expenses as allowed by the note and other loan agreements attached, as well as applicable law, have accrued and continue to accrue on the loan.

17. Pursuant to its rights under the terms of its loan documents, First Dakota seeks to foreclose on the personal property of the Bloms consistent with their terms and applicable South Dakota law.

18. No prior proceedings at law or otherwise for the recovery of the debt secured by the mortgages or security agreement, or any part thereof, has been commenced. First Dakota has not

applied for and has not received any judgment on the indebtedness secured by its mortgages, security agreement or liens.

19. First Dakota has been required to employ the assistance of attorneys to prosecute this action, and is incurring attorneys' fees as a result of the Bloms' defaults under the loan documents. Under the terms of these documents and applicable law, plaintiff's attorneys' fees, sales tax thereon, and legal expenses, costs and disbursements in this action should be determined by the court and allowed as part of the judgment in this action.

20. First Dakota maintains a first perfected and superior lien on all the personal property described in this Complaint, superior to any other person or entity of record as reflected by the applicable loan documents and UCC/EFS search results established by the South Dakota Secretary of State per applicable law and a copy of which is attached hereto as Exhibit 7, but subject to prior priority filing and other caretaker filings of record.

21. Exhibits 1 through 7 are enforceable written agreements between First Dakota and the Bloms.

22. Mutual obligations and benefits paid by First Dakota to Bloms constitute sufficient consideration for the loan documents between First Dakota and the Bloms.

23. Bloms breached contractual obligations to First Dakota as fully set forth herein and First Dakota is entitled to be paid in full on its notes, plus costs, disbursements and attorney's fees.

24. Any surplus proceeds will be paid into the Court per SDCL 15-6-67(a).

COUNT TWO RECEIVERSHIP

25. First Dakota realleges the allegations contained in paragraphs 1-24 above to the same effect as if fully set forth herein.

26. The agricultural security agreement and mortgage specifically authorizes First Dakota to seek receivership during a foreclosure proceeding. *See* Exhibits 5 and 6. At page 4 of the security agreement, the Appoint Receiver provision of the Rights and Remedies section states:

Lender shall have a right to have receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect Rents from the Property and apply the proceeds, over and above the costs of receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver exists whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as receiver.

27. In accordance with SDCL 21-21-1(2), SDCL 21-21-2, SDCL 21-21-5, and SDCL 15-6-66, this Court is empowered to appoint a receiver to take charge of all Bloms' assets, including but not limited to cattle, cattle proceeds and receivables as well as effectuate repairs to the premises, assemble and sell livestock and other pledged personal property collateral, collect rents and/or disclose to said receiver full accountings for accounts receivable, where rents were spent and/or are being held, and other necessary information as the receiver may deem appropriate who will in turn provide a full and fair accounting to the Court.

28. First Dakota believes that a nonparty receiver is required by applicable law, specifically, SDCL 21-21-7. First Dakota would recommend Lewis Dirks, receiver in several prior civil disputes, both in McCook County (*Agri-Steel Inc. et al. v. Feterl Manufacturing*, McCook Co. 08-20 and *First Dakota v. Tyler McGregor, et al.*, 16-32), elsewhere (*Ludens et al. v. Denali et al.*, Bon Homme 10-104), and most recently in Yankton County (*First Dakota v. Joseph Tacke et al.*), 18-69. Mr. Dirks need not post a bond as it was not only waived but First Dakota will pay his expenses and charges for the receivership as well as make any court ordered payments to any parties, subject to any of its statutory or appellate rights.

COUNT THREE DECLARATORY JUDGMENT

29. First Dakota realleges the allegations contained in paragraphs 1-35 above to the same effect as both fully set forth herein.

30. First Dakota seeks a declaratory judgment from the Court per SDCL 15-6-57 as well as pursuant to SDCL 21-24-1 through 21-24-4 and 21-24-7. Specifically, First Dakota seeks a court determination that it is the first lien holder and/or first position secured creditor of the Bloms. First Dakota further seeks a determination that any and all other co-defendants to this action who have claims for unpaid cattle against the Bloms have such claims as junior and inferior to those of First Dakota, which holds a perfected first lien position against all cattle on the Bloms' premises and that were pledged to First Dakota by the Bloms without any notice or caretaker filings from any of the co-Defendants, their banks or any other interested third parties.

31. Because only Defendant Robert Blom can care for and account for the cattle and because he is now incapacitated, the Court should appoint Lew Dirks as an emergency receiver to take care and charge of cattle, sell and account for the proceeds from cattle sales and report to the parties, third party owners and the Court his findings.

WHEREFORE, Plaintiff First Dakota National Bank requests judgment as follows:

1. That it be adjudged that there is due and owing to First Dakota from Defendants under the terms of its Notes as of February 7, 2019, subject to further voluntary liquidation efforts and court approved sales of any receiver;

- (i) the total principal balance due on all notes of \$6,748,600.92;
- (ii) all additional interest accruing from February 8, 2019 until the date of entry of First Dakota's judgment at a per diem rate of \$1,011.054;
- (iii) late charges, attorneys' fees, sales tax thereon, and other expenses and amounts accruing to the date of judgment;
- (iv) in addition, all interest, attorneys' fees, sales tax thereon, and other expenses and amounts which continue to accrue after the date of judgment in accordance with applicable law.

2. That First Dakota's liens be adjudged and decreed to be a lawful priority and first lien upon all personal property of the Bloms, including all livestock that are physically present on their mortgaged premises, prior and superior to all other interests or claims of all persons except for those persons or entities that can establish priority ownership through caretaker and other prior UCC filings, and that such liens be foreclosed in the manner provided by law.
3. That the livestock of the Bloms be decreed to be sold by agreement of the parties or by court appointed receiver, according to law and the rules and practice of this Court.
4. That the proceeds of any livestock sold be brought into Court and subject to further order of the Court;
5. That all proceeds from any assets of the Bloms be applied in payment of the amount due First Dakota as found by the Court's judgment, including all costs and disbursements of this action and of sale, pre- and post-judgment interest, and reasonable attorneys' fees, sales tax and expenses, to the extent that the sale of the Bloms' other assets be insufficient to satisfy their total indebtedness.
6. That First Dakota have such other, different, and further relief as may be deemed just and equitable, including but not limited to a court order temporarily restraining and/or enjoining the Bloms from selling, releasing or transferring any of their remaining pledged personal property or any personal property under their care, custody or in their possession or control.
7. That the Court find that mediation is not viable and/or is waived because of the irreparable harm that would occur in the absence of Lew Dirks being appointed as Receiver.

Dated this 7th day of February, 2019.

/s/ Steven K. Huff

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